IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOBART CORPORATION, *et al.*,	)	CASE NO. 3:13-cv-00115-WHR
	)	
Plaintiffs,	)	JUDGE WALTER H. RICE
	)	
v.	)	
	)	
THE DAYTON POWER & LIGHT COMPANY, *et al.*,	)	**DAP PRODUCTS INC.'S MOTION FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	

Defendant DAP Products Inc. ("DAP") hereby moves the Court, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, for an Order dismissing the claims asserted by Plaintiffs, Hobart Corporation, Kelsey-Hayes Company and NCR Corporation (collectively, "Plaintiffs"), that remain pending against DAP in this action. As set forth more fully in the attached Memorandum in Support, which is incorporated herein by reference, Plaintiffs have failed, despite engaging in investigation and in discovery in three lawsuits over more than eight years, to produce any evidence connecting either DAP or any other entity using the "DAP" name to the arrangement for disposal of hazardous substances at the South Dayton Dump and Landfill (the "Site"). No genuine issue of material fact exists with respect to the lack of any nexus between DAP and the Site, and DAP is entitled to judgment as a matter of law as to Plaintiffs' claims for contribution under Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), for declaratory judgment and for

unjust enrichment.[1] Accordingly, the Court should grant this Motion and dismiss the remaining claims against DAP with prejudice.

Dated: July 8, 2014

Respectfully submitted,

/s/ William E. Coughlin
WILLIAM E. COUGHLIN (0010874)
Trial Attorney
RONALD M. McMILLAN (0072437)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 – Facsimile
wcoughlin@calfee.com
rmcmillan@calfee.com

Attorneys for Defendant DAP Products Inc.

[1] The Court has already dismissed Plaintiffs' CERCLA Section 107 claim (and their corresponding request for a declaration under that section) and the portion of Plaintiffs' unjust enrichment claim relating to costs other than those incurred in searching for other potentially responsible parties. *See* Feb. 18, 2014 Decision and Entry, Doc. No. 189.

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2014, the foregoing **DAP PRODUCTS INC.'S MOTION FOR SUMMARY JUDGMENT**, with attached Memorandum in Support, was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ William E. Coughlin
One of the Attorneys for Defendant DAP Products Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOBART CORPORATION, *et al.*,	)	CASE NO. 3:13-cv-00115-WHR
	)	
Plaintiffs,	)	JUDGE WALTER H. RICE
	)	
v.	)	
	)	
THE DAYTON POWER & LIGHT COMPANY, *et al.*,	)	**MEMORANDUM IN SUPPORT OF DAP PRODUCTS INC.'S MOTION FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	

I. INTRODUCTION

The only evident reason, after eight years of investigation, that Defendant DAP Products Inc. ("DAP") was named as a defendant in this action or in *Hobart Corp., et al. v. Coca-Cola Enters., Inc.*, S.D. Ohio Case No. 12-cv-00213-WHR ("*Hobart II*"), is that Plaintiffs, Hobart Corporation, Kelsey-Hayes Company and NCR Corporation (collectively, "Plaintiffs"), obtained a few lines of testimony from a witness that some DAP products were allegedly at the South Dayton Dump and Landfill (the "Site"). Edward Grillot, a former employee at the Site, was deposed by Plaintiffs in *Hobart Corp. v. Waste Management of Ohio, Inc.*, S.D. Ohio No. 10-cv-00195 ("*Hobart I*"). During that deposition, in response to leading questions from Plaintiffs' counsel, Mr. Grillot testified only that he saw tubes and window glazing at the Site and that there was a plant in the Dayton area that made "DAP" items. *See* April 24, 2012 deposition of Edward Grillot, relevant excerpts of which are attached as Exhibit A, at 119-20 and 142. He answered in the affirmative when asked if a company named "DAP Products perhaps" was a customer of the

Site, *see id.* at 119, but he denied any knowledge of how any materials that he identified with DAP came to be at the Site. *See id.* at 119-20.

Notwithstanding the lack of any evidence, despite substantial discovery in *Hobart I*, showing that DAP, or any prior entity using the DAP name, arranged for the disposal of hazardous substances at the Site, Plaintiffs sued DAP twice, in *Hobart II* and in this action, seeking relief primarily under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"). In this action, Plaintiffs filed a First Amended Complaint containing the following allegations, speculations and conclusory statements regarding DAP:

> Defendant DAP Products Inc. is the legal successor in interest under the theories of de facto merger and/or mere continuation and/or assumption of liabilities to DAP, Inc. ("DAP"). DAP Products Inc. was first incorporated in Delaware as Wassall USA Acquisition, Inc., on September 23, 1991. That same month, Wassall USA Acquisition, Inc. purchased the assets of DAP, and agreed to indemnify DAP for certain environmental liabilities, within which Plaintiffs' claims are included. Wassall USA Acquisition, Inc. changed its name to DAP Products Inc. on November 8, 1991. DAP Products Inc. has substantially continued DAP's business. DAP Products Inc. claims DAP's history as its own on its current website, and it derives financial benefit from the "DAP" name. DAP arranged for the disposal of wastes at the Site, including waste containing hazardous substances from its facilities and operation located in and around Dayton. DAP contributed to Contamination at the Site through its disposal of wastes that included hazardous substances at the Site.

First Amended Complaint, Dkt. No. 144, at ¶ 71.

There is no allegation in the First Amended Complaint that disposal of any hazardous substances occurred on or after September 23, 1991, the date on which DAP was incorporated. Accordingly, Plaintiffs are proceeding solely on a theory that DAP is liable as a successor to Defendant, La Mirada Products Co., Inc. ("La Mirada"),[1] which is alleged to be the current

[1] La Mirada has moved the Court for judgment on the pleadings on the ground that a prior bankruptcy discharged any liability that La Mirada might have to Plaintiffs. *See* Mot. for J. on Pldgs., Dkt No. 232. Separate and apart from La Mirada's Motion, there is no evidence that any

incarnation of DAP, Inc. (*see* First Amended Complaint at ¶ 81). The allegations of successor liability are immaterial, however, as there is no evidence that ***any*** entity using the DAP name disposed of hazardous substances at the Site. Accordingly, because there is no genuine issue of material fact and because DAP is entitled to judgment as a matter of law, summary judgment is appropriate.

II. STATEMENT OF UNDISPUTED FACTS

As noted above, on April 24, 2012, Plaintiffs deposed Edward Grillot and obtained some scant references to alleged DAP materials being at the Site. That deposition took place without DAP's participation.[2] Mr. Grillot has since been deposed in this action, however, and his testimony and the lack of any other evidence here indicates that there is no nexus between any DAP-named entity and disposal of hazardous substances at the Site. Plaintiffs asked a leading question of Mr. Grillot to inquire whether "DAP Products [came] to the South Dayton Dump as waste,"[3] to which Mr. Grillot answered "Yep." *See* Dec. 16-17, 2013 Deposition of Edward Grillot ("Grillot Dep. II"), relevant excerpts of which are attached as Exhibit B, at 53. Plaintiffs' counsel asked a few more leading questions in an attempt to show that "waste from DAP" came to the Site, *see id.* at 63, 71-72. The witness responded that he did not remember how the alleged waste came to the Site. *See id.* at 72.

DAP entity disposed of hazardous substances at the Site. Both DAP and La Mirada should be dismissed, with prejudice, from this action for the reasons set forth herein.

[2] Accordingly, under Federal Rule of Civil Procedure 32(a)(1), this testimony would not be admissible at trial against DAP. DAP is entitled to summary judgment, however, even if Mr. Grillot's ephemeral earlier testimony is considered part of the record.

[3] Given the context of the "Products" coming to the Site "as waste," it would appear that the court reporter improperly capitalized "Products" and that Mr. Grillot was being asked about DAP materials coming to the Site rather than a company named DAP Products.

During examination by DAP's counsel, the witness again admitted that he did not know how any DAP materials came to be at the Site, and he further admitted that DAP did not have a truck of its own that came to the Site. *See* Grillot Dep. II at 351. Further, the witness could not recall any particular emblem that related to DAP, *see id.* at 354. Additionally, despite the extensive discovery in *Hobart I*, Plaintiffs have not produced any contract, any testimony from a transporter, any contract from a transporter, or any other evidence that suggests if or how DAP materials came to be at the Site. In short, even if some items made by a DAP-named entity did eventually wind up at the Site (which DAP denies ever occurred), there is no evidence that DAP, or any entity allegedly a predecessor or affiliate of DAP, arranged for the disposal of any such items at the Site. Based on these undisputed facts, DAP is entitled to summary judgment in its favor.

II. ARGUMENT AND LAW

A. Standard for Granting DAP's Motion for Summary Judgment.

Summary judgment is "an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy, and inexpensive determination of every action'" rather than a "disfavored procedural shortcut." *Cincom Sys., Inc. v. Novelis Corp.*, 581 F.3d 431, 435 (6th Cir. 2009), quoting *Celotex v. Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Summary judgment is appropriate where pleadings, interrogatory answers, documents, depositions, admissions, affidavits, or other evidentiary materials show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c); *Celotex*, 477 U.S. at 322-26.

The moving party bears the initial burden to demonstrate the absence of a disputed issue of material fact. *Celotex*, 477 U.S. at 323. However, if the nonmoving party has the burden of

proof, the moving party need not support its motion with affidavits or other evidence disproving the nonmoving party's claim but only needs to point out that there is an absence of evidence to support the nonmoving party's case. *Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir. 1996), citing *Celotex*, 477 U.S. at 325; *Moore v. Philip Morris Companies, Inc.*, 8 F.3d 335, 339 (6th Cir. 1993). Once the moving party has satisfied this burden, the non-moving party assumes the burden to show that the record reflects a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The pivotal question is whether the party bearing the burden of proof has produced enough evidence to establish each element of its case. *Celotex*, 477 U.S. at 322; *Hartsel*, 87 F.3d at 799. Plaintiffs cannot do so here.

The party opposing summary judgment "may not rely on conclusory allegations or unsubstantiated speculation." *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998). "[S]pecific facts," not "mere conjecture or speculation," are necessary to block summary judgment. *Id.*; *see also Moore*, 8 F.3d at 339-40 (nonmoving party must produce "specific facts" supporting its complaint). The "opposing party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." *Contemporary Mission, Inc. v. U.S. Postal Serv.*, 648 F.2d 97, 107 (2d Cir. 1981), quoting 6 J. MOORE, FEDERAL PRACTICE P 56.15(3) at 56-486 to 56-487 (2d ed. 1976). Moreover, not every disputed factual issue is material in light of the substantive law that governs the case. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude summary judgment." *Liberty Lobby*, 477 U.S. at 248. Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial." *Matsushita*, 475 U.S. at 587.

Here, a rational trier of fact could not find for Plaintiffs against DAP on their CERCLA claims. Such claims require a showing that a defendant arranged for either disposal or transport of hazardous substances to the location at issue. No such evidence exists here. Additionally, Plaintiffs cannot prevail on an unjust enrichment claim against DAP because, without a showing that DAP arranged for disposal or transport of hazardous substances to the Site, Plaintiffs' efforts at remediation did not provide any benefit to DAP. None of Plaintiffs' claims against DAP has any merit, so they should all be dismissed.

B. There Is No Evidence That DAP Arranged for Disposal or Transport of Hazardous Substances at the Site, so DAP Has No CERCLA Liability.

Plaintiffs brought claims for damages and declaratory relief under both CERCLA Section 107 (for cost recovery) and CERCLA Section 113 (for contribution), *see* First Am. Comp. at Counts I, II and IV. Though the Court dismissed Plaintiffs' Section 107 cost recovery claims, a finding of liability under CERCLA Section 107(a) is still necessary to support a claim for contribution under Section 113. *See* 42 U.S.C. § 9613(f)(1) (contribution available only against "any other person who is liable or potentially liable under section 9607(a) of this title"). CERCLA Section 107(a) provides, in relevant part, that a defendant in the position Plaintiffs have alleged DAP to be in must arrange for either the disposal or transport of hazardous substances:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . . any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . . shall be liable for . . . any other necessary costs of response incurred by any other person consistent with the national contingency plan. . . .

42 U.S.C. § 9607(a)(3). Plaintiffs parrot the language of the statute to allege that DAP "arranged for disposal or treatment at the Site, or arranged with a transporter for transport for disposal or treatment at the Site, of hazardous substances owned or possessed by it." First Am. Comp. at ¶ 104. Plaintiffs offer nothing more than the statutory buzzwords to support their claims against DAP, but when required to produce evidence, Plaintiffs fail.

Only one witness – Edward Grillot – gave any testimony to suggest that any material allegedly manufactured by any DAP-named entity existed at the Site. That same sole witness also admitted that he had no knowledge of any DAP trucks ever coming to the Site and that he had no knowledge of how any of the alleged materials came to be at the Site. In other words, even if some DAP materials were found at the Site (which DAP denies), Grillot did not provide any testimony, and Plaintiffs provided no other evidence, to support the allegation that DAP, or any other DAP-named entity, ***arranged*** for the materials to be disposed or transported there. Plaintiffs' failure to prove an essential element of the CERCLA claims dooms those claims, and DAP is entitled to judgment in its favor on them.

C. Plaintiffs' Other Claims Also Fail as a Matter of Law.

The only other claims that survived dismissal are Plaintiffs' claims for a declaration pursuant to CERCLA Section 113(g) and that portion of Plaintiffs' claims for unjust enrichment (First Am. Comp., Count III) that related to "the cost of identifying PRPs" who arranged for the disposal or transport of hazardous substances to the Site. *See* Feb. 18, 2014 Decision and Entry, Dkt. No. 189, at 35. Neither of those claims survives summary judgment. Plaintiffs' declaratory judgment claim fails because there is no viable substantive CERCLA claim to support it. *See, e.g., Union Station Assoc. LLC v. Puget Sound Energy, Inc.*, 238 F. Supp. 2d 1226, 1230 (W.D. Wash. 2002) (after § 107 and § 113 claims were dismissed, "no substantive federal claims exist

upon which to base Union's declaratory judgment claims"); *Reichhold Chems., Inc. v. Textron, Inc.*, 888 F. Supp. 1116, 1124 (N.D. Fla. 1995) (where § 107 claim was dismissed, declaratory judgment claim would also be dismissed).

Additionally, Plaintiffs cannot establish a cause of action for unjust enrichment against DAP because DAP does not benefit from Plaintiffs' attempts to locate other PRPs (or any of Plaintiffs' other efforts in connection with the Site, for that matter). In order to maintain a cause of action for unjust enrichment under Ohio law, a plaintiff must allege: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and, (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Telephone Management Corp. v. The Goodyear Tire Rubber Co.*, 32 F. Supp. 2d 960, 972 (N.D. Ohio 1998) (citations omitted). Here, Plaintiffs' efforts to locate other PRPs might one day benefit other potentially liable parties who will then not have to search for other contributing parties themselves. DAP, however, is not, and will never be, a potentially liable party because there is no evidence that DAP arranged for the disposal or transport of hazardous substances to the Site. Indeed, the only injustice would be to require DAP to share in the cost of Plaintiffs' identification efforts when DAP can make no use of the information.

All of Plaintiffs' claims fail as a matter of law because they all require a showing that DAP arranged for either the disposal or the transport of hazardous substances to the Site. There is no evidence that DAP did so, and as a result, summary judgment is appropriate. DAP's Motion should therefore be granted.

III. CONCLUSION

For the foregoing reasons, therefore, DAP's Motion for Summary Judgment should be granted, and the Court should dismiss Plaintiffs' claims against DAP with prejudice.

Date: July 8, 2014

Respectfully submitted,

/s/ William E. Coughlin
WILLIAM E. COUGHLIN (0010874)
Trial Attorney
RONALD M. McMILLAN (0072437)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 – Facsimile
wcoughlin@calfee.com
rmcmillan@calfee.com

Attorneys for Defendant DAP Products Inc.

Exhibit A

Excerpts from April 24, 2012 Deposition of Edward Grillot

Deposition of Edward Grillot, taken April 24, 2012

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

HOBART CORPORATION, et al.,)
)
Plaintiffs,)
)
-vs-) Case No. 3:10-CV-195
)
WASTE MANAGEMENT OF OHIO,)
INC., et al.,)
)
Defendants.)

DEPOSITION OF EDWARD GRILLOT taken by me, Susan L. Bickert, a Certified Shorthand Reporter and Notary Public in and for the State of Ohio, at large, pursuant to the Federal Rules of Civil Procedure, as upon Direct Examination, at the offices of Thompson Hine, LLP, Austin Landing I, 10050 Innovation Drive, Suite 400, Dayton, Ohio 45342, on Tuesday, April 24, 2012, commencing at 10:10 o'clock a.m. on behalf of the Plaintiffs.

Just on the subject of General Refuse, which you said in your mind was connected to Container Service, do you know who their customers were?

A Like I said, Valley Farms. I know that. Liberal Markets, Kroger's. Later on Liberal turned to Metro Markets. Just about any businesses. Now, when the Dayton Mall came into play a lot of them -- their trash came to -- if it's cardboard or stuff like that, it came to the dump.

Q To your dump; right?

A Yeah.

A And then like I mentioned that Blaylock got all the garbage.

Q Right. All right. I'm going to move on now to a company called D-A-P, DAP. DAP Products perhaps?

A Yeah, they were up by Wright-Patterson. They had a lot of caulking, silicone products, came in tubes, construction stuff.

Q Were they a customer of the South Dayton Dump?

A Yeah, mm-hmm.

Q And you saw their trucks come in?
A I don't think they had a truck.
Q How did they get their stuff to your site?
A I don't know.
Q Maybe used another hauler?
A Probably, yeah.
Q So how do you know they were coming into your site if you didn't see the trucks?
A Because I saw the tubes.
Q And did it say DAP on it?
A Yeah, mm-hmm.
Q Oh, it said "DAP" right on the tubes?
A Right on the tubes, yeah.
Q Okay. Any other stuff coming in from them that had their name on it?
A They had cans of window glazing that would come in.
Q It said "DAP" on those, too?
A Mm-hmm.
Q Did they have an emblem of any kind that you remember?
A I don't remember.
Q You want to think about that one?

'cause they made -- they had a lot -- made a lot of steering wheels. Then they had baskets that they'd put the steering wheels in, I guess, to have 'em coated with a certain rubber type of thing.

Q Which one of the Inland plants did you take a look at?

A That was up off of -- on the west side. It was --

Q West side of Dayton; right?

A Yeah. McCall Street -- well, McCall Street and -- I don't remember the other street. There was a big plant.

Q Any other customers' plants that you visited?

A We went out to DAP 'cause Dad told me that DAP had -- they had displays of windows that they would glaze to see how long their product would last, and I wanted to see that. So I remember going up there.

Q That was up near you said Wright-Pat?

A Right.

Q Any other companies that their plants you visited?

A Frigidaire. Got to go down to

Exhibit B

Excerpts from December 16-17, 2013 Deposition of Edward Grillot

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

* * *

HOBART CORPORATION,
et al. ,

Plaintiffs, CASE NO. 3:13-cv-115

vs. VOLUME I

THE DAYTON POWER AND LIGHT
COMPANY, et al. ,

Defendants.

* * *

Deposition of EDWARD GRILLOT , Witness herein, called by the Plaintiffs for direct examination pursuant to the Rules of Civil Procedure, taken before me, Barbara A. Nikolai, a Notary Public in and for the State of Ohio, at Sebaly, Shillito + Dyer, 1900 Kettering Tower, 40 North Main Street, 13th Floor Conference Room, Dayton, Ohio, on Monday, December 16th, 2013, at 9:22 o'clock a.m.

* * *

10:06:32 BY MR. ROMINE:

10:06:32 Q. Did DAP Products come to the South Dayton Dump as waste ?

10:06:36 A. Yep.

10:06:37 MR. COUGHLIN: Object to form . Leading .

10:06:39 BY MR. ROMINE:

10:06:39 Q. Go ahead .

10:06:41 MR. COUGHLIN: And , Dave , so I'm not -- I have to do this question by question , because apart from the form objection , there's also an objection that emerges from the November 6th hearing we had , and that was , we were supposed to get a synopsis so we could evaluate whether or not you were going to be retreading the same ground in this deposition as in the 2012 deposition , we didn't get that , and it also sounds like you're retreading the same ground.

10:07:10 So on the basis of the directives we got from the Court on November 6th, I'm going to move to strike the testimony as well . I want to try to have to avoid -- I'm going to try to avoid object ing to each question , but without the synopsis, I don't know until I hear it, and in light of the question -- in light of the prior

10:16:33 in a minute . Could you read back the last
10:17:57 question and answer, please ?
10:17:57 (Record read.)
10:17:57 BY MR. ROMINE:
10:18:56 Q. Was DAP waste brought to South
10:18:56 Dayton Dump?
10:18:59 A. Yeah.
10:18:59 MR. COUGHLIN: Objection to form .
10:19:00 Leading .
10:19:01 BY MR. ROMINE:
10:19:02 Q. And what kind of waste from DAP
10:19:04 came into the site ?
10:19:06 MR. COUGHLIN: Objection to form .
10:19:07 Leading .
10:19:09 MR. HARRIS: Glen n Harris joins .
10:19:09 MR. DICKERSON: La Mirada joins .
10:19:14 THE WITNESS: What do I do ?
10:19:14 BY MR. ROMINE:
10:19:14 Q. Go ahead . You can answer .
10:19:20 A. Like the plastic tubes that -- at
10:19:25 that time , I believe , they -- today I'm a
10:19:28 carpenter now , so -- but most ly like paper
10:19:31 tubes that had aluminum and like a rubber end
10:19:35 to it.
10:19:36 MR. COUGHLIN: Move to strike .

10:24:36 the glazing cans disposed of?
10:24:39 MR. COUGHLIN: Objection to form.
10:24:41 BY MR. ROMINE:
10:24:41 Q. Go ahead.
10:24:41 A. The -- with the other debris on
10:24:45 the third tier.
10:24:45 Q. Okay.
10:24:46 MR. COUGHLIN: Move to strike.
10:24:47 BY MR. ROMINE:
10:24:47 Q. With the caulking tubes?
10:24:49 A. Yes.
10:24:50 Q. Okay.
10:24:50 MR. COUGHLIN: Same objection. Same
10:24:52 motion to strike.
10:24:52 BY MR. ROMINE:
10:24:52 Q. Other than the caulking tubes, the
10:24:58 glazing cans, the pallets, was there other
10:25:03 waste from DAP that came to South Dayton Dump?
10:25:05 MR. COUGHLIN: Objection to form.
10:25:09 THE WITNESS: Not to my recollection.
10:25:11 BY MR. ROMINE:
10:25:11 Q. And when do you first remember
10:25:15 waste from DAP coming to South Dayton Dump?
10:25:17 MR. COUGHLIN: Objection to form.
10:25:24 THE WITNESS: In the '70s -- or '60s

10:25:26 mostly .

10:25:27 MR. COUGHLIN: Move to strike.

10:25:29 BY MR. ROMINE:

10:25:29 Q. Okay. And did waste from DAP come to the site throughout its operation?

10:25:34 MR. COUGHLIN: Objection to form .

10:25:38 THE WITNESS: Now I forgot the question .

10:25:39 BY MR. ROMINE:

10:25:39 Q. Did waste come from DAP throughout the time that the s ite was operating ?

10:25:43 A. Yes.

10:25:44 MR. COUGHLIN: Same objection . Move to strike .

10:25:47 BY MR. ROMINE:

10:25:47 Q. And did the waste from DAP come in DAP's own trucks or was it hauled by somebody else?

10:25:53 MR. COUGHLIN: Objection to form .

10:25:55 THE WITNESS: I don't remember .

10:25:55 BY MR. ROMINE:

10:25:56 Q. Okay . How frequently did you see DAP waste at South Dayton Dump ?

10:26:05 A. I'm really having a hard time thinking right now because I feel tension, a

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

* * *

HOBART CORPORATION,
et al. ,
Plaintiffs, CASE NO. 3:13-cv-115
vs. VOLUME II
THE DAYTON POWER AND LIGHT
COMPANY, et al. ,
Defendants.

* * *

Deposition of EDWARD GRILLOT , Witness herein, called by the Plaintiffs for direct examination pursuant to the Rules of Civil Procedure, taken before me, Barbara A. Nikolai, a Notary Public in and for the State of Ohio, at Sebaly, Shillito + Dyer, 1900 Kettering Tower, 40 North Main Street, 13th Floor Conference Room, Dayton, Ohio, on Tuesday, December 17th, 2013, at 9:01 o'clock a.m.

* * *

10:10:12 testimony --
10:10:12 A. Okay.
10:10:12 Q. -- from April 24, 2012.
10:10:15 A. Sure.
10:10:15 Q. And I'll represent to you and
10:10:17 counsel and to the Court, that this is all of
10:10:19 your testimony from that deposition relating to
10:10:21 DAP.
10:10:22 A. Okay. All right.
10:10:22 Q. And I'd ask you to turn to page
10:10:29 120, line three. Do you have that in front of
10:10:34 you?
10:10:35 A. I do now.
10:10:35 Q. And do you see where it says, how
10:10:41 did they get their stuff to your site? Answer
10:10:42 at line five, I don't know. Did I read that
10:10:45 correctly, sir?
10:10:47 A. Correct.
10:10:47 Q. Thank you. Would you hand that
10:10:49 back to me?
10:10:49 A. Um-hum.
10:10:50 Q. And as you testified yesterday, it
10:10:56 was your belief that DAP did not have a truck
10:10:59 of its own that came to the site, correct?
10:11:02 A. Correct, um-hum.

10:13:06 your work at the landfill that you were
10:13:09 involved in various construction jobs, correct?
10:13:12 A. Correct.
10:13:12 MR. ROMINE: Objection.
10:13:14 Unnecessarily repeats testimony from yesterday and
10:13:15 from 2012.
10:13:18 BY MR. COUGHLIN:
10:13:18 Q. You with me, sir?
10:13:20 A. Correct.
10:13:20 Q. And do you recall you thought that
10:13:23 you used DAP products in various ways when you
10:13:28 were doing construction work, right?
10:13:29 A. Yeah.
10:13:29 Q. Now, you have no idea whether --
10:13:32 what you were using in construction had the
10:13:35 same formulations as what may have been DAP
10:13:38 products from a prior time, correct?
10:13:40 A. Correct, um-hum.
10:13:43 Q. And you also testified before that
10:14:04 you did not recall any particular emblem that
10:14:09 related to DAP, correct?
10:14:10 A. Correct.
10:14:11 Q. And that at no point in time did
10:14:19 you ever tour a DAP plant, did you?
10:14:20 A. No.

U.S. District Court

Southern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Coughlin, William on 7/8/2014 at 1:07 PM EDT and filed on 7/8/2014

Case Name: Hobart Corporation et al v. The Dayton Power and Light Company et al
Case Number: 3:13-cv-00115-WHR
Filer: DAP Products, Inc.
Document Number: 266

Docket Text:
MOTION for Summary Judgment by Defendant DAP Products, Inc.. Responses due by 8/1/2014 (Attachments: # (1) Memorandum in Support, # (2) Exhibit A (Excerpts from April 24, 2012 Deposition of Edward Grillot), # (3) Exhibit B (Excerpts from December 16-17, 2013 Deposition of Edward Grillot)) (Coughlin, William)

3:13-cv-00115-WHR Notice has been electronically mailed to:

Andrew Ethan Rudloff arudloff@swohiolaw.com, sebenger@swohiolaw.com

Andrew W Knuth , III aknuth@morganlewis.com, tguzzi@morganlewis.com

Ann M Hunt ahunt@mcdonaldhopkins.com, mhdocket@mcdonaldhopkins.com

Anthony M Sharett asharett@bricker.com, amoss@bricker.com, lstanley@bricker.com

Bonni Fine Kaufman bonni.kaufman@hklaw.com

Brian L Wildermuth bwildermuth@swohiolaw.com, sebenger@swohiolaw.com

Christopher Allen Walker cwalker@vankleywalker.com

Daniel E. Gerken dgerken@bricker.com, aklein@bricker.com

David C Ahlstrom ahlstd1@nationwide.com, matneyc@nationwide.com

David E Romine dromine@lssh-law.com

David Philip Pierce pierce@coollaw.com, bourdow@coollaw.com, posey@coollaw.com

David T Moss Dmoss@hcplaw.net

Donald Jeffrey Ireland djireland@ficlaw.com, ncarr@ficlaw.com

Drew H Campbell dcampbell@bricker.com, amoss@bricker.com, sturner@bricker.com

Duke K McCall , III duke.mccall@bingham.com, david.brown@bingham.com, ivonne.diazpertilla@bingham.com, kenyatta.parker@bingham.com

Edward L Bettendorf eb5312@att.com

Erik J Wineland ewineland@gallaghersharp.com, jhooven@gallaghersharp.com

Erin Rhinehart erhinehart@ficlaw.com, lbeemsterboer@ficlaw.com

Erin K Walsh ewalsh@mcdonaldhopkins.com, mhdocket@mcdonaldhopkins.com

Frank Leslie Merrill fmerrill@bricker.com, tkindinger@bricker.com

Gregory Paul Dunsky gregory.dunsky@usdoj.gov, angela.trumbauer@usdoj.gov, debbie.munt@usdoj.gov

Jack Allen Van Kley jvankley@vankleywalker.com

James Alan Dyer jdyer@ssdlaw.com, lmatevia@ssdlaw.com

James B Slaughter jslaughter@bdlaw.com

James Craig Carpenter james.carpenter@steptoe-johnson.com, jennifer.king@steptoe-johnson.com, shannon.todd@steptoe-johnson.com, vince.holzhall@steptoe-johnson.com

James Joseph Dragna jim.dragna@bingham.com

James M Dickerson , Jr jdickerson@taftlaw.com, bmartin@taftlaw.com, docket@taftlaw.com, mthompson@taftlaw.com, npieczonka@taftlaw.com

Jennifer Graham Meyer jmeyer@lssh-law.com

Jennifer L Hurley McGay jennifer.hurleymcgay@bingham.com

Jerome W Cook jcook@mcdonaldhopkins.com, mhdocket@mcdonaldhopkins.com

John A Andreasen jandreasen@mcgrathnorth.com

John C Musto john.musto@daytonohio.gov

Joseph Jude Golian jgolian@dmclaw.com, eforman@dmclaw.com, jwalter@dmclaw.com

Katerina M Eftimoff Milenkovski kathy.milenkovski@steptoe-johnson.com

Kim Kenneth Burke kburke@taftlaw.com, docket@taftlaw.com, mccrea@taftlaw.com

Larry Silver lsilver@langsamstevens.com

Leah J Knowlton knowltonl@ballardspahr.com, hughesa@ballardspahr.com, jasikb@ballardspahr.com

Martin Harry Lewis mlewis@tuckerellis.com

Michael Charles Lueder mlueder@foley.com, ballen-johnson@foley.com, jhagarty@foley.com, kszyszko@foley.com, sslack@foley.com

Michael D Dortch mdortch@kravitzllc.com, clerk@kravitzllc.com, ldortch@kravitzllc.com, msimpson@kravitzllc.com, rparsons@kravitzllc.com

Michael Lee Stokes michael.stokes@ohioattorneygeneral.gov

Orla Ellis Collier , III ocollier@beneschlaw.com, docket@beneschlaw.com, tcrawford@beneschlaw.com

Patrick J Murphy Patrick.murphy@quarles.com

Peter T Stinson pstinson@dmclaw.com

Robert A. Florez florez@ctlawcincinnati.com

Robert Brent Sherwood rsherwood@gs-legal.com, cpence@gs-legal.com, daniel.arking@hklaw.com, kimberly.thompson@hklaw.com

Robert H Eddy reddy@gallaghersharp.com, thall@gallaghersharp.com

Robert Joseph Thumann thumann@ctlawcincinnati.com

Robert Perry Bartlett , Jr rbartlett@ficlaw.com, srode@ficlaw.com

Sarah A Slack sslack@foley.com

Scott Sander Davies sdavies@ssdlaw.com, lmatevia@ssdlaw.com

Shannon Lesley Costello costello@coollaw.com, bourdow@coollaw.com, lane@coollaw.com

Stephen Neal Haughey shaughey@fbtlaw.com, kfry@fbtlaw.com, tdriscoll@fbtlaw.com

Steven A Luxton sluxton@morganlewis.com, tguzzi@morganlewis.com

Steven Morris Sherman ssherman@kdlegal.com, awoodlee@kdlegal.com, lhamil@kdlegal.com

Suzanne M Fisher sfisher@mdllp.net

Thaddeus Henderson Driscoll tdriscoll@fbtlaw.com, thad.driscoll@gmail.com

Theodore J Esborn tesborn@mcdonaldhopkins.com, mhdocket@mcdonaldhopkins.com

Vicki J Wright vwright@kdlegal.com, awoodlee@kdlegal.com, rjones@kdlegal.com

William Wick bwick@ww-envlaw.com, carolebert@ww-envlaw.com

William Brad Nes bnes@morganlewis.com, tguzzi@morganlewis.com

William E Coughlin wcoughlin@calfee.com, thagert@calfee.com

William H Harbeck william.harbeck@quarles.com, susan.lund@quarles.com

William Roger Fry wrf@rendigs.com

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David Karl Brown
Bingham McCutchen LLP

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Document description: Memorandum in Support
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